

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA**

**In re** ) **Chapter 11**  
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**FREEDOM INDUSTRIES, INC.** ) **Case No. 2:14-bk-20017**  
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 )  
**Debtor.** ) **Honorable Ronald G. Pearson**  
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**UNITED STATES' OBJECTIONS TO  
FINAL ORDER AUTHORIZING DEBTOR-IN-POSSESSION FINANCING**

The United States of America, on behalf of the Environmental Protection Agency (“EPA”), an Interested Party in the matter currently before the Court, submits this Objection to the Debtor’s Proposed Final Order Authorizing Debtor-In-Possession Financing.

**BACKGROUND**

On January 17, 2014, Freedom Industries, Inc. (“Debtor”) filed an Emergency Motion for Interim and Final Order Authorizing Debtor-In-Possession (“DIP”) Financing. (Doc. 2, “Financing Motion”). The Debtor simultaneously filed a proposed Interim DIP financing Order. (Doc. 2-1, “Proposed Interim Order”) On January 21, 2014, Counsel for the United States requested that Debtor’s counsel amend the Proposed Interim Order to include certain language to which Debtor’s counsel agreed. On January 28, 2014, the Court entered the Corrective Interim Agreed Order Authorizing Debtor-In-Possession Financing, which contained the agreed upon language. (Doc. 96, “Interim Order”). The Interim Order further provided that the Final Hearing on the Financing Motion would be held on February 11, 2014, and required objections to the Financing Motion or entry of a final order to be filed by February 5, 2014. (Doc. 96).

On February 4, 2014, Counsel for the United States contacted Debtor's counsel and DIP Lender's counsel requesting: (a) a copy of a proposed Final Order for review to determine if the United States had any objections; (b) that one clarifying sentence be added to Paragraph 52 of the Interim Order, to the extent the Interim Order served as the proposed Final Order; and (c) granting an extension of time to the United States to object to the proposed Final Order in the event Debtor's Counsel and DIP Lender's counsel were either unable to respond, or unable to provide a copy of the proposed Final Order. Debtor's Counsel and DIP Lender's counsel subsequently agreed to extend the United States' objection deadline to February 6, 2014, and again to February 10, 2014. On February 10, 2014, Debtor's Counsel agreed to extend the objection deadline until after the United States was provided the opportunity to review the proposed Final Order, "subject to court protocol for the venue."

On February 6, 2014, the Court issued an Order Continuing and Rescheduling Matters Scheduled For Hearing on February 11, 2014 Until February 21, 2014. (Doc. 121). Debtor's Counsel has not provided the United States with a proposed Final Order, and to date, has not agreed to include all of the United States' proposed language. DIP Lender's counsel does not object to the United States' proposed language.

#### OBJECTIONS

1. To the extent the Debtor intends to submit a new proposed Final Order, the United States reserves its right to object until after being provided the opportunity to review the proposed Final Order.
2. The United States objects to the Financing Motion unless the *italicized* language appearing below is included in the Final Order:

“52. Nothing in this Order or the DIP Agreement or Loan Documents shall relieve the Debtor of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b). *Nothing in this Order or the DIP Agreement or Loan Documents shall excuse compliance with any order of the West Virginia Department of Environmental Protection or the United States Environmental Protection Agency to address public health or environmental threats.* Nothing in this Order or the DIP Agreement or Loan Documents shall impair or adversely affect any claim of any governmental unit with respect to any insurance proceeds for liabilities under environmental laws to the extent not permitted by applicable law. As to the United States, any State or municipality and any of the foregoing’s respective agencies, departments or agents, nothing in this Order or the DIP Agreement or Loan Documents shall discharge, release or otherwise preclude any valid right of setoff or recoupment that any such entity may have. Nothing in this Order or the DIP Agreement or Loan Documents impairs or adversely affects any right of a governmental unit under financial assurance instruments provided by the Debtor to comply with non-bankruptcy law. Except as provided above, all rights and defenses of the Debtor and its bankruptcy estate with respect to the foregoing reservations are reserved.”

The DIP must manage and operate the property in its possession “according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.” *See 28 U.S.C. 959(b).*

Dated: February 20, 2014

Respectfully Submitted,

**FOR THE UNITED STATES OF AMERICA:**

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Environment & Natural Resources Division  
U.S. Department of Justice

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2014, I caused a copy of the foregoing Objections to the Debtor's Proposed Final Order Authorizing Debtor-In-Possession Financing to be served on all registered ECF recipients in this matter.

/s/ Joshua Van Eaton

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JOSHUA VAN EATON, ESQ.